

AMENDED IN ASSEMBLY JULY 19, 2004

AMENDED IN ASSEMBLY JUNE 14, 2004

SENATE BILL

No. 1549

Introduced by Senator Figueroa

(Coauthors: Senators Aanestad and Vincent)

(Coauthors: Assembly Members Correa, Runner, and Nation)

February 19, 2004

An act to amend Sections 2455, 2456, 2457, 2472, 2499.5, 5510, 5517, 5620, 5621, 5622, ~~and 5641 of, and 5641, 5810, 8030.2, 8030.4, 8030.6, and 8030.8 of~~, to add Sections 5552.5, 5641.1, 5641.2, 5641.3, 5641.4, ~~5641.6, and 5685 to~~ *and 5641.6 to, and to repeal Section 5645 of*, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1549, as amended, Figueroa. Professions and vocations.

(1) Existing law provides for the regulation of physicians and surgeons practicing osteopathic medicine by the Osteopathic Medical Board of California. Existing law requires an applicant for an original or reciprocity Physicians and Surgeons Certificate to pay an application fee in a sum not to exceed \$200. Existing law requires a person holding a certificate issued by the board to pay an annual registration fee.

This bill would authorize the board to increase the amount of the fee to not more than \$400 for an original or reciprocity certificate. The bill would instead require persons holding a certificate issued by the board to pay a biennial license fee. Because the bill would increase the amount of revenue deposited into the Contingent Fund of the Osteopathic

Medical Board of California, which is a continuously appropriated fund, it would make an appropriation.

(2) Existing law establishes the California Architects Board in the Department of Consumer Affairs. Existing law authorizes the board to appoint an executive officer who is exempt from civil service to exercise the powers and perform the duties delegated by the board. Existing law creates a Landscape Architects Technical Committee within the board and authorizes the board to delegate specified authority to the committee. Existing law authorizes the committee to assist the board in the examination of candidates for a landscape architect's license and to make specified recommendations to the board regarding the regulation of landscape architects in California. Existing law provides for these provisions to become inoperative on July 1, 2005, and repealed on January 1, 2006.

This bill would delete the dates on which these provisions are to become inoperative and repealed and would instead provide that they are to become inoperative on July 1, 2009, and repealed on January 1, 2010. The bill would increase the number of members on the Landscape Architects Technical Committee from 5 to 7. The bill would exempt specified activities of various persons from the laws regulating landscape architects, including, among others, architects, professional engineers, land surveyors, landscape contractors, and irrigation consultants. The bill would also authorize the board to implement, by regulation, an intern development program until July 1, 2009.

(3) *Existing law defines certified interior designers and interior design organizations, and permits a certified interior designer to obtain and use a stamp identifying the designer. All documents submitted to a government regulatory organization by a certified interior designer must be affixed by the stamp. The provisions governing certified interior designers will be repealed January 1, 2006.*

This bill would extend the repeal date of these provisions to January 1, 2007.

(4) *Existing law establishes a Court Reporters Board of California which is responsible for regulating those engaged in the practice of shorthand reporting. Existing law also establishes the Transcript Reimbursement Fund to provide shorthand reporting services to low-income litigants by reimbursing applicants for the cost, as specified, of preparing transcripts. The moneys in the fund are derived from excess moneys in the Court Reporters Fund and are continuously appropriated. Under existing law, the provisions creating and*



governing the use of the fund will become inoperative on July 1, 2005, and will be repealed on January 1, 2006.

This bill would extend the operation of these provisions until July 1, 2006, and would repeal them on January 1, 2007.

By extending the operation of the Transcript Reimbursement Fund, a continuously appropriated fund, this bill would make an appropriation.

(5) This bill would incorporate additional changes in Section 2472 of the Business and Professions Code, proposed by AB 932, to be operative only if AB 932 and this bill are both chaptered and become effective on or before January 1, 2005, and this bill is chaptered last.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2455 of the Business and Professions
2 Code is amended to read:

3 2455. The amount of fees and refunds is that established by
4 the following schedule for any certificate issued by the
5 Osteopathic Medical Board of California. All other fees and
6 refunds for any certificate issued by the Osteopathic Medical
7 Board of California which are not prescribed in this schedule, are
8 prescribed in Section 2456. Any and all fees received by the
9 Osteopathic Medical Board of California shall be for the sole
10 purpose of the operation of the board and shall not be used for any
11 other purpose.

12 (a) Each applicant for an original or reciprocity Physicians and
13 Surgeons Certificate shall pay an application fee in a sum not to
14 exceed four hundred dollars (\$400) at the time his or her
15 application is filed.

16 (b) The biennial license fee, unless otherwise provided, shall be
17 set by the board on or before November 1 of each year for the
18 ensuing calendar year at a sum as the board determines necessary
19 to defray the expenses of administering this chapter, under the
20 Osteopathic Act, relating to the issuance of certificates to those
21 applicants, which sum, however, shall, not exceed four hundred
22 dollars (\$400) nor be less than twenty-five dollars (\$25).

1 (c) The board shall set a biennial license fee in an amount less
2 than that levied pursuant to subdivision (b) that shall be paid by any
3 applicant who indicates to the board in writing that he or she does
4 not intend to practice under the Osteopathic Act during the current
5 renewal period .

6 (d) The fee for failure to pay the biennial license fee shall be 50
7 percent of the renewal fee but not more than two hundred dollars
8 (\$200).

9 SEC. 2. Section 2456 of the Business and Professions Code
10 is amended to read:

11 2456. (a) Each person holding a certificate issued by the
12 Osteopathic Medical Board of California residing in or out of
13 California shall pay the board a biennial license fee.

14 (b) Fictitious name permits issued by the Osteopathic Medical
15 Board of California as provided in Section 2415 shall expire on
16 December 31 of each year. The initial permit fee shall not exceed
17 one hundred dollars (\$100) and the renewal permit fee shall not
18 exceed one hundred dollars (\$100).

19 SEC. 3. Section 2457 of the Business and Professions Code
20 is amended to read:

21 2457. The failure of any person holding a certificate issued by
22 the Osteopathic Medical Board of California to pay the biennial
23 license fee during the time his or her certificate remains in force,
24 shall automatically work a forfeiture of his or her certificate after
25 a period of 60 days from the date of expiration.

26 The certificate shall not be restored except upon written
27 application and the payment to the Osteopathic Medical Board of
28 California of the fee provided by this article. No examination shall
29 be required for the reissuance of a certificate that was forfeited
30 under the provisions of this section.

31 SEC. 4. Section 2472 of the Business and Professions Code
32 is amended to read:

33 2472. (a) The certificate to practice podiatric medicine
34 authorizes the holder to practice podiatric medicine.

35 (b) As used in this chapter, “podiatric medicine” means the
36 diagnosis, medical, surgical, mechanical, manipulative, and
37 electrical treatment of the human foot, including the ankle and
38 tendons that insert into the foot and the nonsurgical treatment of
39 the muscles and tendons of the leg governing the functions of the
40 foot.

1 (c) No podiatrist shall do any amputation or administer an
2 anesthetic other than local. If an anesthetic other than local is
3 required for any procedure, the anesthetic shall be administered by
4 another licensed health care practitioner , who is authorized to
5 administer the required anesthetic within the scope of his or her
6 practice.

7 (d) Surgical treatment of the ankle and tendons at the level of
8 the ankle may be performed by a doctor of podiatric medicine who
9 was certified by the board on and after January 1, 1984.

10 (e) Surgical treatment by a podiatrist of the ankle and tendons
11 at the level of the ankle shall be performed only in the following
12 locations:

13 (1) A licensed general acute care hospital, as defined in Section
14 1250 of the Health and Safety Code.

15 (2) A licensed surgical clinic, as defined in Section 1204 of the
16 Health and Safety Code, if the podiatrist has surgical privileges,
17 including the privilege to perform surgery on the ankle, in a
18 general acute care hospital described in ~~subparagraph~~ paragraph
19 (1) and meets all the protocols of the surgical clinic.

20 (3) An ambulatory surgical center that is certified to participate
21 in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395
22 et seq.) of the federal Social Security Act, if the podiatrist has
23 surgical privileges, including the privilege to perform surgery on
24 the ankle, in a general acute care hospital described in
25 ~~subparagraph~~ paragraph (1) and meets all the protocols of the
26 surgical center.

27 (4) A freestanding physical plant housing outpatient services of
28 a licensed general acute care hospital, as defined in Section 1250
29 of the Health and Safety Code, if the podiatrist has surgical
30 privileges, including the privilege to perform surgery on the ankle,
31 in a general acute care hospital described in paragraph (1). For
32 purposes of this section, a “freestanding physical plant” means
33 any building that is not physically attached to a building where
34 inpatient services are provided.

35 (f) The amendment of this section made at the 1983–84
36 Regular Session of the Legislature is intended to codify existing
37 practice.

38 (g) A podiatrist licensed under this chapter is a licentiate for
39 purposes of paragraph (2) of subdivision (a) of Section 805, and

1 thus is a health care practitioner subject to the provisions of
2 Section 2290.5 pursuant to subdivision (b) of that section.

3 *SEC. 4.5. Section 2472 of the Business and Professions Code*
4 *is amended to read:*

5 2472. (a) The certificate to practice podiatric medicine
6 authorizes the holder to practice podiatric medicine.

7 (b) As used in this chapter, “podiatric medicine” means the
8 diagnosis, medical, surgical, mechanical, manipulative, and
9 electrical treatment of the human foot, including the ankle and
10 tendons that insert into the foot and the nonsurgical treatment of
11 the muscles and tendons of the leg governing the functions of the
12 foot.

13 ~~(c) No podiatrist shall do any amputation or~~ A doctor of
14 ~~podiatric medicine may not~~ administer an anesthetic other than
15 local. If an anesthetic other than local is required for any
16 procedure, the anesthetic shall be administered by another *licensed*
17 ~~health care practitioner licensed under this division~~, who is
18 authorized to administer the required anesthetic within the scope
19 of his or her practice.

20 ~~(d) Surgical treatment of the ankle and tendons at the level of~~
21 ~~the ankle may be performed by a~~ (1) A doctor of podiatric
22 medicine who ~~was~~ *is* ankle certified by the board on and after
23 January 1, 1984.

24 ~~(e) Surgical 1984, may do the following:~~

25 (A) ~~Perform surgical treatment by a podiatrist of the ankle and~~
26 ~~tendons at the level of the ankle shall be performed pursuant to~~
27 ~~subdivision (e).~~

28 (B) *Perform services under the direct supervision of a*
29 *physician and surgeon, as an assistant at surgery, in surgical*
30 *procedures that are otherwise beyond the scope of practice of a*
31 *doctor of podiatric medicine.*

32 (C) *Perform a partial amputation of the foot no further*
33 *proximal than the Chopart’s joint.*

34 (2) *Nothing in this subdivision shall be construed to permit a*
35 *doctor of podiatric medicine to function as a primary surgeon for*
36 *any procedure beyond his or her scope of practice.*

37 (e) *A doctor of podiatric medicine may perform surgical*
38 *treatment of the ankle and tendons at the level of the ankle only in*
39 *the following locations:*

(1) A licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code.

(2) A licensed surgical clinic, as defined in Section 1204 of the Health and Safety Code, if the ~~podiatrist~~ *doctor of podiatric medicine* has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in ~~subparagraph~~ *paragraph* (1) and meets all the protocols of the surgical clinic.

(3) An ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, if the ~~podiatrist~~ *doctor of podiatric medicine* has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in ~~subparagraph~~ *paragraph* (1) and meets all the protocols of the surgical center.

(4) A freestanding physical plant housing outpatient services of a licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code, if the ~~podiatrist~~ *doctor of podiatric medicine* has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in paragraph (1). For purposes of this section, a “freestanding physical plant” means any building that is not physically attached to a building where inpatient services are provided.

~~(f)–~~

(5) *An outpatient setting accredited pursuant to subdivision (g) of Section 1248.1 of the Health and Safety Code.*

(f) *A doctor of podiatric medicine shall not perform an admitting history and physical examination of a patient in an acute care hospital where doing so would violate the regulations governing the Medicare program.*

(g) The amendment of this section made at the 1983–84 Regular Session of the Legislature is intended to codify existing practice.

~~(g)~~

(h) A podiatrist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

1 SEC. 5. Section 2499.5 of the Business and Professions Code
2 is amended to read:

3 2499.5. The following fees apply to certificates to practice
4 podiatric medicine. The amount of fees prescribed for doctors of
5 podiatric medicine shall be those set forth in this section unless a
6 lower fee is established by the board in accordance with Section
7 2499.6. Fees collected pursuant to this section shall be fixed by the
8 board in amounts not to exceed the actual costs of providing the
9 service for which the fee is collected.

10 (a) Each applicant for a certificate to practice podiatric
11 medicine shall pay an application fee of twenty dollars (\$20) at the
12 time the application is filed. If the applicant qualifies for a
13 certificate, he or she shall pay a fee which shall be fixed by the
14 board at an amount not to exceed one hundred dollars (\$100) nor
15 less than five dollars (\$5) for the issuance of the certificate.

16 (b) The oral examination fee shall be seven hundred dollars
17 (\$700), or the actual cost, whichever is lower, and shall be paid by
18 each applicant. If the applicant's credentials are insufficient or if
19 the applicant does not desire to take the examination, and has so
20 notified the board 30 days prior to the examination date, only the
21 examination fee is returnable to the applicant. The board may
22 charge an examination fee for any subsequent reexamination of the
23 applicant.

24 (c) Each applicant who qualifies for a certificate, as a condition
25 precedent to its issuance, in addition to other fees required by this
26 section, shall pay an initial license fee. The initial license fee shall
27 be eight hundred dollars (\$800). The initial license shall expire the
28 second year after its issuance on the last day of the month of birth
29 of the licensee. The board may reduce the initial license fee by up
30 to 50 percent of the amount of the fee for any applicant who is
31 enrolled in a postgraduate training program approved by the board
32 or who has completed a postgraduate training program approved
33 by the board within six months prior to the payment of the initial
34 license fee.

35 (d) The biennial renewal fee shall be nine hundred dollars
36 (\$900). Any licensee enrolled in an approved residency program
37 shall be required to pay only 50 percent of the biennial renewal fee
38 at the time of his or her first renewal.

39 (e) The delinquency fee is one hundred fifty dollars (\$150).

40 (f) The duplicate wall certificate fee is forty dollars (\$40).

(g) The duplicate renewal receipt fee is forty dollars (\$40).

(h) The endorsement fee is thirty dollars (\$30).

(i) The letter of good standing fee or for loan deferment is thirty dollars (\$30).

(j) There shall be a fee of sixty dollars (\$60) for the issuance of a resident's license under Section 2475.

(k) The application fee for ankle certification under Section 2472 for persons licensed prior to January 1, 1984, shall be fifty dollars (\$50). The examination and reexamination fee for this certification shall be seven hundred dollars (\$700).

(l) The filing fee to appeal the failure of an oral examination shall be twenty-five dollars (\$25).

(m) The fee for approval of a continuing education course or program shall be one hundred dollars (\$100).

SEC. 6. Section 5510 of the Business and Professions Code is amended to read:

5510. There is in the Department of Consumer Affairs a California Architects Board which consists of 10 members.

Any reference in law to the California Board of Architectural Examiners shall mean the California Architects Board.

This section shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 7. Section 5517 of the Business and Professions Code is amended to read:

5517. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. *Section 5552.5 is added to the Business and Professions Code, to read:*

5552.5. *The board may, by regulation, implement an intern development program until July 1, 2009.*

1 *SEC. 9.* Section 5620 of the Business and Professions Code is
2 amended to read:

3 5620. The duties, powers, purposes, responsibilities, and
4 jurisdiction of the California State Board of Landscape Architects
5 that were succeeded to and vested with the Department of
6 Consumer Affairs in accordance with Chapter 908 of the Statutes
7 of 1994 are hereby transferred to the California Architects Board.
8 The Legislature finds that the purpose for the transfer of power is
9 to promote and enhance the efficiency of state government and that
10 assumption of the powers and duties by the California Architects
11 Board shall not be viewed or construed as a precedent for the
12 establishment of state regulation over a profession or vocation that
13 was not previously regulated by a board, as defined in Section 477.

14 (a) There is in the Department of Consumer Affairs a
15 California Architects Board as defined in Article 2 (commencing
16 with Section 5510) of Chapter 3.

17 Whenever in this chapter “board” is used it refers to the
18 California Architects Board.

19 (b) Except as provided herein, the board may delegate its
20 authority under this chapter to the Landscape Architects Technical
21 Committee.

22 (c) After review of proposed regulations, the board may direct
23 the examining committee to notice and conduct hearings to adopt,
24 amend, or repeal regulations pursuant to Section 5630, provided
25 that the board itself shall take final action to adopt, amend, or
26 repeal those regulations.

27 (d) The board shall not delegate its authority to discipline a
28 landscape architect or to take action against a person who has
29 violated this chapter.

30 (e) This section shall become inoperative on July 1, 2009, and
31 as of January 1, 2010, is repealed, unless a later enacted statute,
32 that becomes operative on or before January 1, 2010, deletes or
33 extends the dates on which it becomes inoperative and is repealed.

34 ~~SEC. 9.~~

35 *SEC. 10.* Section 5621 of the Business and Professions Code
36 is amended to read:

37 5621. (a) There is hereby created within the jurisdiction of
38 the board, a Landscape Architects Technical Committee,
39 hereinafter referred to in this chapter as the landscape architects
40 committee.

(b) The landscape architects committee shall consist of seven members ~~who shall be licensed to practice landscape architecture in this state, five who are landscape architects and two public members.~~ The Governor shall appoint ~~five of the~~ the landscape architect members. The Senate Committee on Rules and the Speaker of the Assembly shall ~~appoint one member each~~ each appoint a public member.

~~(c) The initial members to be appointed by the Governor are as follows: two member for a term of one year; two member for a term of two years; and one member for a term of three years. The Senate Committee on Rules and the Speaker of the Assembly shall initially each appoint one member for a term of four years. Thereafter, appointments~~

(c) *Appointments* shall be made for four-year terms, expiring on June 1 of the fourth year and until the appointment and qualification of his or her successor or until one year shall have elapsed whichever first occurs. Vacancies shall be filled for the unexpired term.

(d) No person shall serve as a member of the landscape architects committee for more than two consecutive terms.

(e) This section shall become inoperative on July 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 10.~~

SEC. 11. Section 5622 of the Business and Professions Code is amended to read:

5622. (a) The landscape architects committee may assist the board in the examination of candidates for a landscape architect's license and, after investigation, evaluate and make recommendations regarding potential violations of this chapter.

(b) The landscape architects committee may investigate, assist, and make recommendations to the board regarding the regulation of landscape architects in this state.

(c) The landscape architects committee may perform duties and functions that have been delegated to it by the board pursuant to Section 5620.

(d) The landscape architects committee may send a representative to all meetings of the full board to report on the committee's activities.

(e) This section shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 11.~~

SEC. 12. Section 5641 of the Business and Professions Code is amended to read:

5641. This chapter shall not be deemed to prohibit any person from preparing drawings for the conceptual design and placement of tangible objects and landscape features or plans, drawings, and specifications for the selection, placement, or use of plants for a single family dwelling. Construction documents, details, or specifications for the tangible objects or landscape features, and alteration of site requiring grading and drainage plans shall be prepared by a licensed professional as required by law.

~~SEC. 12.~~

SEC. 13. Section 5641.1 is added to the Business and Professions Code, to read:

5641.1. This chapter shall not be deemed to prohibit any person from preparing any plans, drawings, or specifications for any property owned by that person.

~~SEC. 13.~~

SEC. 14. Section 5641.2 is added to the Business and Professions Code, to read:

5641.2. Every person who holds a valid license issued by the State of California under the provisions of Chapter 1 (commencing with Section 6721) of the Food and Agricultural Code, authorizing engagement in the business of selling nursery stock in this state, may engage in the preparation of planting plans or drawings as an adjunct to merchandising nursery stock and related products, but may not use the title of landscape architect. That activity is exempt from licensure under the provisions of this chapter.

~~SEC. 14.~~

SEC. 15. Section 5641.3 is added to the Business and Professions Code, to read:

5641.3. An architect, professional engineer or land surveyor licensed or registered under the statutes of this state, insofar as the licensed or registered professional practices the profession for which he or she is licensed or registered, is exempt from the provisions of this chapter, except that an architect, professional

1 engineer, or land surveyor may not use the title “landscape
2 architect” unless he or she holds a license as required under this
3 chapter.

4 ~~SEC. 15.~~

5 *SEC. 16.* Section 5641.4 is added to the Business and
6 Professions Code, to read:

7 5641.4. A landscape contractor licensed under the statutes of
8 this state may design systems and facilities for work to be
9 performed and supervised by that landscape contractor, insofar as
10 he or she works within the classification for which he or she is
11 licensed. The licensed landscape contractor is exempt from the
12 provisions of this chapter, except that he or she may not use the title
13 “landscape architect” unless he or she holds a license as required
14 under this chapter.

15 ~~SEC. 16.~~

16 *SEC. 17.* Section 5641.6 is added to the Business and
17 Professions Code, to read:

18 5641.6. (a) Nothing contained in this chapter shall be deemed
19 to prohibit a person from engaging in the practice of, or offering
20 to practice as, an irrigation consultant.

21 (b) As used in this section, “irrigation consultant” means a
22 person who performs professional services such as consultation,
23 investigation, reconnaissance, research, design, preparation of
24 drawings and specifications and responsible supervision, where
25 the dominant purpose of such service is the design of landscape
26 irrigation, in accordance with accepted professional standards of
27 public health and safety.

28 ~~SEC. 17. Section 5685 is added to the Business and~~
29 ~~Professions Code, to read:~~

30 ~~5685. The board may, by regulation, implement an intern~~
31 ~~development program until July 1, 2009.~~

32 *SEC. 18. Section 5645 of the Business and Professions Code*
33 *is repealed.*

34 ~~5645. (a) Nothing contained in this chapter shall be deemed~~
35 ~~to prohibit a person from engaging in the practice of, or offering~~
36 ~~to practice as, an irrigation consultant.~~

37 ~~(b) As used in this section, “irrigation consultant” means a~~
38 ~~person who performs professional services such as consultation,~~
39 ~~investigation, reconnaissance, research, design, preparation of~~
40 ~~drawings and specifications and responsible supervision, where~~

~~the dominant purpose of such service is the design of landscape irrigation, in accordance with accepted professional standards of public health and safety.~~

SEC. 19. Section 5810 of the Business and Professions Code is amended to read:

5810. (a) This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

(b) This chapter shall remain in effect only until January 1, 2006 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006 2007, deletes or extends that date.

SEC. 20. Section 8030.2 of the Business and Professions Code is amended to read:

8030.2. (a) To provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services, funds generated by fees received by the board pursuant to subdivision (c) of Section 8031 in excess of funds needed to support the board's operating budget for the fiscal year in which a transfer described below is made shall be used by the board for the purpose of establishing and maintaining a Transcript Reimbursement Fund. The Transcript Reimbursement Fund shall be established by a transfer of funds from the Court Reporters' Fund and shall be maintained in an amount no less than three hundred thousand dollars (\$300,000) for each fiscal year.

(b) All moneys held in the Court Reporters' Fund on the effective date of this section in excess of the board's operating budget for the 1996–97 fiscal year shall be used as provided in subdivision (a).

(c) Refunds and unexpended funds that are anticipated to remain in the Transcript Reimbursement Fund at the end of the fiscal year shall be considered by the board in establishing the fee assessment pursuant to Section 8031 so that the assessment shall maintain the Transcript Reimbursement Fund at the appropriate level in the following fiscal year.

(d) The Transcript Reimbursement Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the Transcript Reimbursement Fund are continuously appropriated for the purposes of this chapter.

(e) Applicants who have been reimbursed pursuant to this chapter for services provided to litigants and who are awarded court costs or attorneys' fees by judgment or by settlement agreement, shall refund the full amount of that reimbursement to the fund within 90 days of receipt of the award or settlement.

(f) Subject to the limitations of this chapter, the board shall maintain the fund at a level that is sufficient to pay all qualified claims. To accomplish this objective, the board shall utilize all refunds, unexpended funds, fees, and any other moneys received by the board.

(g) Notwithstanding Section 16346 of the Government Code, all unencumbered funds remaining in the Transcript Reimbursement Fund as of June 29, ~~2005~~ 2006, shall be transferred to the Court Reporters' Fund.

This section shall become inoperative on July 1, ~~2005~~ 2006, and, as of January 1, ~~2006~~ 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2006~~ 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 21. Section 8030.4 of the Business and Professions Code is amended to read:

8030.4. As used in this chapter:

(a) "Qualified legal services project" means a nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons, has a board of directors or advisory board composed of both attorneys and consumers of legal services, and provides for community participation in legal services programming. Legal services projects funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(b) "Qualified support center" means an incorporated nonprofit legal services center, having an office or offices in California, which office or offices provide legal services or technical assistance without charge to qualified legal services projects and their clients on a multicounty basis in California. Support centers funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are

1 presumed to be qualified legal services projects for the purposes
2 of this chapter.

3 (c) “Other qualified project” means a nonprofit organization
4 formed for charitable or other public purposes, not receiving funds
5 from the Legal Services Corporation or pursuant to the Older
6 Americans Act, which organization or association provides free
7 legal services to indigent persons.

8 (d) “Pro bono attorney” means any attorney, law firm, or legal
9 corporation, licensed to practice law in this state, which undertakes
10 without charge to the party the representation of an indigent
11 person, referred by a qualified legal services project, qualified
12 support center, or other qualified project, in a case not considered
13 to be fee generating as defined in this chapter.

14 (e) “Applicant” means a qualified legal services project,
15 qualified support center, other qualified project, or pro bono
16 attorney applying to receive funds from the Transcript
17 Reimbursement Fund established by this chapter. The term
18 “applicant” shall not include persons appearing pro se to represent
19 themselves at any stage of the case.

20 (f) “Indigent person” means either a person whose income is
21 125 percent or less of the current poverty threshold established by
22 the Office of Management and Budget of the United States, a
23 disabled person whose income after meeting medical and other
24 disability-related special expenses is 125 percent or less of that
25 current poverty threshold, or a person who receives or is eligible
26 to receive supplemental security income.

27 (g) “Fee-generating case” means any case or matter which, if
28 undertaken on behalf of an eligible client by an attorney in private
29 practice, reasonably may be expected to result in payment of a fee
30 for legal services from an award to a client, from public funds, or
31 from an opposing party. A reasonable expectation as to payment
32 of a legal fee exists wherever a client enters into a contingent fee
33 agreement with his or her lawyer. If there is no contingent fee
34 agreement, a case is not considered fee generating if adequate
35 representation is deemed to be unavailable because of the
36 occurrence of any of the following circumstances:

37 (1) Where the applicant has determined that referral is not
38 possible because of any of the following:



1 (A) The case has been rejected by the local lawyer referral
2 service, or if there is no such service, by two private attorneys who
3 have experience in the subject matter of the case.

4 (B) Neither the referral service nor any lawyer will consider the
5 case without payment of a consultation fee.

6 (C) The case is of the type that private attorneys in the area
7 ordinarily do not accept, or do not accept without prepayment of
8 a fee.

9 (D) Emergency circumstances compel immediate action
10 before referral can be made, but the client is advised that, if
11 appropriate and consistent with professional responsibility,
12 referral will be attempted at a later time.

13 (2) Where recovery of damages is not the principal object of the
14 case and a request for damages is merely ancillary to an action for
15 equitable or other nonpecuniary relief; or inclusion of a
16 counterclaim requesting damages is necessary for effective
17 defense or because of applicable rules governing joinder of
18 counterclaims.

19 (3) Where a court appoints an applicant or an employee of an
20 applicant pursuant to a statute or a court rule or practice of equal
21 applicability to all attorneys in the jurisdiction.

22 (4) In any case involving the rights of a claimant under a public
23 supported benefit program for which entitlement to benefit is
24 based on need.

25 (h) “Legal Services Corporation” means the Legal Services
26 Corporation established under the Legal Services Corporation Act
27 of 1974, Public Law 93-355, as amended.

28 (i) “Supplemental security income recipient” means an
29 individual receiving or eligible to receive payments under Title
30 XVI of the Social Security Act, Public Law 92-603, as amended,
31 or payment under Chapter 3 (commencing with Section 12000) of
32 Part 3 of Division 9 of the Welfare and Institutions Code.

33 (j) “Lawyer referral service” means a lawyer referral program
34 authorized by the State Bar of California pursuant to the rules of
35 professional conduct.

36 (k) “Older Americans Act” means the Older Americans Act of
37 1965, Public Law 89-73, as amended.

38 (l) “Rules of professional conduct” means those rules adopted
39 by the State Bar pursuant to Sections 6076 and 6077.

(m) “Certified shorthand reporter” means a shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) performing shorthand reporting services pursuant to Section 8017.

(n) “Case” means a single legal proceeding from its inception, through all levels of hearing, trial, and appeal, until its ultimate conclusion and disposition.

This section shall become inoperative on July 1, ~~2005~~ 2006, and, as of January 1, ~~2006~~ 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2006~~ 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 22. Section 8030.6 of the Business and Professions Code is amended to read:

8030.6. The board shall disburse funds from the Transcript Reimbursement Fund for the costs, exclusive of per diem charges, of preparing either an original transcript and one copy thereof, or where appropriate, a copy of the transcript, of court or deposition proceedings, or both, incurred as a contractual obligation between the shorthand reporter and the applicant, for litigation conducted in California. If no deposition transcript is ordered, the board may reimburse the applicant or the certified shorthand reporter designated in the application for per diem costs. The rate of per diem for depositions shall not exceed seventy-five dollars (\$75) for a half day, or one hundred twenty-five dollars (\$125) for a full day. In the event that a transcript is ordered within one year of the date of the deposition, but subsequent to the per diem having been reimbursed by the Transcript Reimbursement Fund, the amount of the per diem shall be deducted from the amount of transcript. Reimbursement may be obtained through the following procedures:

(a) The applicant or certified shorthand reporter shall promptly submit to the board the certified shorthand reporter’s invoice for transcripts together with the appropriate documentation as is required by this chapter.

(b) Except as provided in subdivision (c), the board shall promptly determine if the applicant or the certified shorthand reporter is entitled to reimbursement under this chapter and shall make payment as follows:

1 (1) Regular customary charges for preparation of original
2 deposition transcripts and one copy thereof, or a copy of the
3 transcripts.

4 (2) Regular customary charges for expedited deposition
5 transcripts up to a maximum of two thousand five hundred dollars
6 (\$2,500) per case.

7 (3) Regular customary charges for the preparation of original
8 transcripts and one copy thereof, or a copy of transcripts of court
9 proceedings.

10 (4) Regular customary charges for expedited or daily charges
11 for preparation of original transcripts and one copy thereof or a
12 copy of transcripts of court proceedings.

13 (5) The charges may not include notary or handling fees. The
14 charges may include actual shipping costs and exhibits, except that
15 the cost of exhibits may not exceed thirty-five cents (\$0.35) each
16 or a total of thirty-five dollars (\$35) per transcript.

17 (c) The maximum amount reimbursable by the fund under
18 subdivision (b) may not exceed twenty thousand dollars (\$20,000)
19 per case per year.

20 (d) If entitled, and funds are available, the board shall forthwith
21 disburse the appropriate sum to the applicant or the certified
22 shorthand reporter when documentation as provided in
23 subdivision (d) of Section 8030.8 accompanies the application. A
24 notice shall be sent to the recipient requiring the recipient to file
25 a notice with the court in which the action is pending stating the
26 sum of reimbursement paid pursuant to this section. The notice
27 filed with the court shall also state that if the sum is subsequently
28 included in any award of costs made in the action, that the sum is
29 to be ordered refunded by the applicant to the Transcript
30 Reimbursement Fund whenever the sum is actually recovered as
31 costs. The court may not consider whether payment has been made
32 from the Transcript Reimbursement Fund in determining the
33 appropriateness of any award of costs to the parties. The board
34 shall also forthwith notify the applicant that the reimbursed sum
35 has been paid to the certified shorthand reporter and shall likewise
36 notify the applicant of the duty to refund any of the sum actually
37 recovered as costs in the action.

38 (e) If not entitled, the board shall forthwith return a copy of the
39 invoice to the applicant and the designated certified shorthand
40 reporter together with a notice stating the grounds for denial.

(f) The board shall complete its actions under this subdivision within 30 days of receipt of the invoice and all required documentation, including a completed application.

(g) Applications for reimbursements from the fund shall be filled on a first-come basis.

(h) Applications for reimbursement that cannot be paid from the fund due to insufficiency of the fund for that fiscal year shall be held over until the next fiscal year to be paid out of the renewed fund.

This section shall become inoperative on July 1, ~~2005~~ 2006, and, as of January 1, ~~2006~~ 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2006~~ 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 23. Section 8030.8 of the Business and Professions Code is amended to read:

8030.8. (a) For purposes of this chapter, documentation accompanying an invoice is sufficient to establish entitlement for reimbursement from the Transcript Reimbursement Fund if it is filed with the executive officer on an application form prescribed by the board that is complete in all respects, and that establishes all of the following:

(1) The case name and number and that the litigant or litigants requesting the reimbursement are indigent persons.

(2) The applicant is qualified under the provisions of this chapter.

(3) The case is not a fee-generating case, as defined in Section 8030.4.

(4) The invoice or other documentation shall evidence that the certified shorthand reporter to be reimbursed was, at the time the services were rendered, a duly licensed certified shorthand reporter.

(5) The invoice shall be accompanied by a statement, signed by the applicant, stating that the charges are for transcripts actually provided as indicated on the invoice.

(6) The applicant has acknowledged, in writing, that as a condition of entitlement for reimbursement that the applicant agrees to refund the entire amount disbursed from the Transcript Reimbursement Fund from any costs or attorneys' fees awarded

1 to the applicant by the court or provided for in any settlement
2 agreement in the case.

3 (7) The certified shorthand reporter's invoice for transcripts
4 shall include separate itemizations of charges claimed, as follows:

5 (A) Total charges and rates for customary services in
6 preparation of an original transcript and one copy or a copy of the
7 transcript of depositions.

8 (B) Total charges and rates for expedited deposition transcripts.

9 (C) Total charges and rates in connection with transcription of
10 court proceedings.

11 (b) For an applicant claiming to be eligible pursuant to
12 subdivision (a), (b), or (c) of Section 8030.4, a letter from the
13 director of the project or center, certifying that the project or center
14 meets the standards set forth in one of those subdivisions and that
15 the litigant or litigants are indigent persons, is sufficient
16 documentation to establish eligibility.

17 (c) For an applicant claiming to be eligible pursuant to
18 subdivision (d) of Section 8030.4, a letter certifying that the
19 applicant meets the requirements of that subdivision, that the case
20 is not a fee-generating case, as defined in subdivision (g) of
21 Section 8030.4, and that the litigant or litigants are indigent
22 persons, together with a letter from the director of a project or
23 center defined in subdivision (a), (b), or (c) of Section 8030.4
24 certifying that the litigant or litigants had been referred by that
25 project or center to the applicant, is sufficient documentation to
26 establish eligibility.

27 (d) The applicant may receive reimbursement directly from the
28 board when the applicant has previously paid the certified
29 shorthand reporter for transcripts as provided in Section 8030.6.
30 To receive payment directly, the applicant shall submit, in addition
31 to all other required documentation, an itemized statement signed
32 by the certified shorthand reporter performing the services that
33 describes payment for transcripts in accordance with the
34 requirements of Section 8030.6.

35 (e) The board may prescribe appropriate forms to be used by
36 applicants and certified reporters to facilitate these requirements.

37 (f) This chapter does not restrict the contractual obligation or
38 payment for services, including, but not limited to, billing the
39 applicant directly, during the pendency of the claim.

1 This section shall become inoperative on July 1, ~~2005~~ 2006,
2 and, as of January 1, ~~2006~~ 2007, is repealed, unless a later enacted
3 statute, that becomes operative on or before January 1, ~~2006~~ 2007,
4 deletes or extends the dates on which it becomes inoperative and
5 is repealed.

6 *SEC. 24. Section 4.5 of this bill incorporates amendments to*
7 *Section 2472 of the Business and Professions Code proposed by*
8 *both this bill and AB 932. It shall only become operative if (1) both*
9 *bills are enacted and become effective on or before January 1,*
10 *2005, (2) each bill amends Section 2472 of the Business and*
11 *Professions Code, and (3) this bill is enacted after AB 932, in*
12 *which case Section 4 of this bill shall not become operative.*

